

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

APR 29 2015

MC AIRLAID'S VLIESTOFFE
GMBH, and


MC AIRLAIDS, INC.,

Plaintiffs,

v.

MEDLINE INDUSTRIES, INC.

Defendant.

JULIA C. QUINN, CLERK
BY: 
DEPUTY CLERK

Civil Action No. 7:15cv208

TRIAL BY JURY DEMANDED

COMPLAINT

Plaintiffs McAirLaid's Vliesstoffe GmbH and McAirLaid's, Inc. (collectively, "McAirLaid's"), by counsel, for its Complaint against Defendant Medline Industries, Inc. ("Medline"), states as follows:

NATURE OF THE ACTION

1. This action arises out of Medline's and its dealers', distributors', and resellers' wrongful conduct related to their marketing and sales of Medline's China-made knock-off Ultrasorbs® underpads *without* McAirLaid's patented SuperCore® technology ("Medline's China-Made Ultrasorbs") which are marketed and sold as counterfeits of the genuine, McAirLaid's-produced Ultrasorbs® *with* McAirLaid's patented SuperCore® technology ("McAirLaid's-made, Genuine Ultrasorbs").

2. McAirLaid's-made, Genuine Ultrasorbs are: (1) made by McAirLaid's in the U.S.A. (not in China); (2) marketed and sold as containing an airlaid absorbent core resulting from the process patented in United States Patent No. 6,675,702 (the "'702 Patent") and marketed and sold under McAirLaid's "SuperCore" registered trademark ("Patented SuperCore® Technology"); and (3) marketed and sold with McAirLaid's distinctive and nonfunctional

registered trade dress design consisting of a point pattern of repeating embossed dots (“McAirlaids’ Trade Dress”).

3. Significantly, McAirlaids-made, Genuine Ultrasorbs with McAirlaids’ Patented SuperCore® Technology are clinically proven to reduce the incidence of hospital-acquired pressure ulcers, and are marketed and sold to customers, including hospitals and patient-care facilities, based on this proven clinical benefit and corresponding cost-savings with patient care.

4. Contrary to Medline’s and its dealers’, distributors’, and resellers’ false marketing and advertising, Medline’s China-made Ultrasorbs: (1) are not made in the U.S.A.; (2) do not contain McAirlaids’ Patented SuperCore® Technology; (3) do not contain McAirlaids’ Trade Dress; and (4) are *not* clinically proven to reduce the incidence of hospital-acquired pressure ulcers.

5. Despite the fact that Medline’s China-made Ultrasorbs are not clinically proven to reduce the incidence of hospital-acquired pressure ulcers and provide the corresponding cost-savings for patient care, Medline and its dealers, distributors, and resellers use false advertising to pass off Medline’s China-made Ultrasorbs as McAirlaids-made, Genuine Ultrasorbs with McAirlaids’ Patented SuperCore® Technology.

6. In so doing, Medline and its dealers, distributors, and resellers defraud customers, including hospitals and patient-care facilities, into falsely believing that Medline’s China-made Ultrasorbs provide the same, clinically proven ulcer prevention benefits and corresponding cost-savings with patient care.

7. Medline’s and its dealers’, distributors’, and resellers’ wrongful conduct presents a grave threat to public health and safety because hospitals, patient-care facilities, and others mistakenly believe that they are purchasing a product which is clinically proven to reduce

pressure ulcers, but instead receive a cheaper-quality, knock-off product with no such proven benefit.

8. Medline's and its dealers', distributors', and resellers' wrongful conduct not only presents a grave threat to public health and safety, it presents a grave threat to, and injures McAirLaid's reputation, goodwill in the industry, and economic interests. Because of Medline's and its dealers', distributors', and resellers' false advertising, customers are defrauded into believing that Medline's counterfeit pads are made by McAirLaid in the U.S.A. and contain McAirLaid's Patented SuperCore® Technology and/or Trade Dress.

9. After purchasing and receiving the product, however, purchasers discover, contrary to the representations at the time of purchase, that the pads are, in fact, made in China—because this geographic source is printed on the boxes received post-sale—and purchasers discover that the decorative embossed pattern on the purchased product may vary from the advertised McAirLaid's Trade Dress.

10. The post-sale disclosure that the pads were made in China would lead purchasers to conclude that McAirLaid is involved in manufacturing cheaper, inferior products in China and that McAirLaid is involved in Medline's and its dealers', distributors', and resellers' false advertising. This post-sale disclosure could also lead purchasers to believe that McAirLaid has adopted a new trade dress pattern and diminish the strength of McAirLaid's Trade Dress.

11. Unfortunately for McAirLaid and purchasers, there is no easy way for purchasers to determine, post-sale, that Medline's China-made Ultrasorbs are made without McAirLaid's Patented SuperCore® Technology. Purchasers therefore incorrectly conclude, based on the false advertising at the time of purchase, that Medline's China-made Ultrasorbs contain McAirLaid's Patented SuperCore® Technology and confer the accompanying clinical and cost-saving benefits.

12. Purchasers could only discover the inferior quality and performance after using Medline's China-made Ultrasorbs. However, based on Medline's and its dealers', distributors', and resellers' false advertising, purchasers could reasonably (albeit incorrectly) attribute that inferior performance and quality to a reduction in the quality and performance of McAirlaids' Patented SuperCore® Technology. This false advertising and association with inferior performance and quality diminishes the value of McAirlaids' SuperCore® mark and the value of McAirlaids' '702 Patent.

13. Medline's and its dealers', distributors', and resellers' wrongful conduct in marketing, advertising and selling Medline's China-made Ultrasorbs have reduced sales of, and demand for, McAirlaids-made, Genuine Ultrasorbs.

14. Medline's and its dealers', distributors', and resellers' wrongful conduct are causing immediate, irreparable harm to hospitals, patient-care facilities, and others who mistakenly believe that they are purchasing McAirlaids-made, Genuine Ultrasorbs with Patented SuperCore® Technology that is clinically proven to reduce pressure ulcers, but instead receive a cheaper-quality, knock-off product with no such proven clinical efficacy.

15. Medline's and its dealers', distributors', and resellers' wrongful conduct are causing immediate, irreparable harm to McAirlaids' reputation through: (1) McAirlaids' false association with the production of cheaper, inferior products made in China; (2) McAirlaids' association with false advertisements to purchasers; (3) McAirlaids' diminishing goodwill in its SuperCore® mark through its association with Medline's China-made Ultrasorbs; and (4) McAirlaids' diminishing goodwill in its '702 Patent from the patent's association with Medline's China-made Ultrasorbs.

16. Medline's and its dealers', distributors', and resellers' wrongful conduct are causing immediate irreparable harm to McAirlaids' economic interest by: (1) reducing sales and

demand for McAirLaid's-made, Genuine Ultrasorbs; (2) reducing the goodwill and economic value of McAirLaid's SuperCore® mark and McAirLaid's '702 Patent; (3) intermingling McAirLaid's-made, Genuine Ultrasorbs with Medline's China-made Ultrasorbs in the marketplace and creating a false sense of equivalency.

17. Based on Medline's and its dealers', distributors', and resellers' wrongful conduct, as alleged herein, Medline is liable to McAirLaid's for: (1) trademark infringement, trade dress infringement and counterfeiting under 15 U.S.C. § 1114 (Count I); (2) common law unfair competition (Count II); (3) contributory and/or vicarious infringement arising out of Medline's dealers', distributors' and/or resellers' infringement and counterfeiting of McAirLaid's trademark and trade dress (Count III); (4) false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (Count IV); (5) false advertising under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (Count V); (6) contributory and/or vicarious false advertising and false designation of source and origin arising out of Medline's dealers', distributors' and/or resellers' violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (Count VI); and (7) false advertising under Virginia Code §§ 18.2-216, 59.1-68.3 (Count VII).

18. McAirLaid's, Inc. has pending claims against Medline in a related case before this Court: *McAirLaid's, Inc. v. Medline Industries, Inc.*, Case No. 7:15-cv-6-MFU ("*Medline I*").

19. Due to the exigent need for immediate injunctive relief to prevent continuing irreparable harm to McAirLaid's, purchasers, and patients, and the fact that the wrongs alleged herein relate to wrongful conduct arising out of and related to the false advertising and sales of Medline's China-made Ultrasorbs, which are not transactions or occurrences at issue in *Medline I*, McAirLaid's is filing this action. McAirLaid's, however, intends to move to consolidate this action with *Medline I* and/or amend to consolidate the claims and allegations into one Complaint.

PARTIES

20. McAirloid's Vliesstoffe GmbH ("McAirloid's GmbH") is a German private limited liability company with its principal place of business in Steinfurt, Germany. McAirloid's GmbH is the parent company of McAirloads, Inc.

21. McAirloads, Inc. is a Virginia corporation with its principal place of business in Rocky Mount, Virginia. McAirloads, Inc. is a wholly owned subsidiary of McAirloid's GmbH.

22. Upon information and belief, Medline is an Illinois corporation with its principal place of business in Mundelein, Illinois. Medline is registered to do business in the Commonwealth of Virginia.

JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 as the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest, costs and attorneys' fees, and the matter in controversy is between citizens of different states. This Court also has subject matter jurisdiction pursuant to 15 U.S.C. §§ 1116 and 1121(a) and 28 U.S.C. §§ 1331, and 1338(a) & (b). This Court has supplemental jurisdiction over the state common law claims under 28 U.S.C. § 1367(a).

24. This Court has personal jurisdiction over Medline because Medline conducts and has conducted ongoing and continuous business in the Commonwealth of Virginia and the Western District of Virginia, and because Medline is subject to jurisdiction under Virginia Code § 8.01-328.1. By its physical presence in Virginia and this District, Medline has engaged in business dealings and has contracted with persons and entities in Virginia and this District. Medline has purposefully directed its business activities toward Virginia and this District. Through its conduct, Medline has purposefully availed itself of the privileges of conducting

business in Virginia and this District. While engaging in its conduct, it was reasonably foreseeable that Medline would be subjected to this Court's jurisdiction.

25. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b) and (c) in that Medline is subject to personal jurisdiction in this District. Venue in this Court is also appropriate because a substantial part of the events or omissions giving rise to McAirLaid's claims against Medline occurred in the cities or counties constituting the Roanoke Division.

FACTUAL BACKGROUND

26. At all times since 2005, McAirLaid has been in business in the United States manufacturing, selling and/or marketing medical and hygienic absorbent pads, including absorbent incontinence bed pads.

McAirLaid's '702 Patent

27. McAirLaid is the owner by assignment from the inventor Alexander Maksimow of the '702 Patent, entitled "Method and Device for Producing a Strip of Cellulose Fiber Material for Use in Hygiene Articles," which was duly and legally issued by the United States Patent and Trademark Office on January 13, 2004. A copy of the '702 Patent is attached hereto as **Exhibit A** and incorporated by reference.

28. McAirLaid's '702 Patent gives McAirLaid the exclusive right to use its patented process to create the resulting, highly absorbent airlaid core for use in products throughout the United States.

McAirLaid's SuperCore Trademark

29. McAirLaid owns U.S. Registration No. 2,516,219 for the SuperCore® word mark which was issued on the Principal Register by the United States Patent and Trademark Office on December 11, 2001. A copy of the registration certificate for McAirLaid's SuperCore® is attached hereto as **Exhibit B** and incorporated by reference.

30. McAirlands' SuperCore® federal trademark registration gives McAirlands the exclusive right to use its mark throughout the United States, and the right to prevent the counterfeit use of its SuperCore® mark.

31. McAirlands SuperCore® registration covers, among other things, "NON-WOVEN FABRICS OF CELLULOSE FIBERS", IN CLASS 24 (U.S. CLS.42 AND 50).

32. Consistent with this classification, McAirlands SuperCore® mark is and has been used in marketing and advertising to identify McAirlands' highly absorbent, airlaid core produced using McAirlands' '702 Patented process.

33. McAirlands has made a substantial investment in the promotion and protection of its SuperCore® mark to identify its highly absorbent, airlaid core produced using McAirlands' '702 Patented process.

34. McAirlands has used the SuperCore mark to market and advertise its highly absorbent, airlaid core produced as a result of McAirlands' '702 Patented process since at least 1999.

35. Indeed on April 27, 1999, prior to being a registered mark, SuperCore™ was used as a source identifier for the now-patented '702 Patented process, and won the prestigious Index '99 Award for advances in the nonwovens. Industry publications, such as "Medical Textiles," published the award stating:

During the opening ceremony of the Index '99 exhibition held in April in Geneva, Switzerland, one of the four awards for advances in nonwovens was presented to McAirland's in the category "Nonwoven roll goods for disposable end-uses".

The winning product, called SuperCore, is a pre-manufactured binder- and glue-free absorbent core for hygiene products. The thin nonwoven fabric needs only to be unwound and cut. It is said to feature very fast fluid distribution with super fast absorption, excellent wicking, no gel blocking and no barriers caused by latex, thermal fibres or hot melts....

See Award for SuperCore, Medical Textiles (July 1, 1999) available at <http://www.highbeam.com/doc/1G1-55055889.html>.

36. Since its inception, McAirlaids has continued to use SuperCore™ and SuperCore® to market, advertise and sell its highly absorbent, airlaid core produced as a result of McAirlaids' '702 Patented process.

37. McAirlaids considers the SuperCore® mark among its most important and valuable assets.

38. McAirlaids' SuperCore® mark confers upon McAirlaids the exclusive right to exploit commercially McAirlaids' SuperCore® mark and bar the unauthorized use by third parties of any similar mark that creates a likelihood of confusion.

McAirlaids' Trade Dress

39. Since 2005, McAirlaids' absorbent pads have had McAirlaids' Trade Dress.

40. McAirlaids owns U.S. Registration No. 4,104,123 for McAirlaids' Trade Dress, which was issued on the Principal Register by the United States Patent and Trademark Office on February 28, 2012. A copy of the registration certificate for McAirlaids' Trade Dress is attached hereto as **Exhibit C** and incorporated by reference. McAirlaids' federal trademark registration gives McAirlaids the exclusive right to use McAirlaids' Trade Dress throughout the United States in connection with absorbent pads.

41. Since 2005, McAirlaids has sold over 200 million absorbent pads in the United States with McAirlaids' Trade Dress.

42. Companies in the absorbent pad industry use their respective trade dress patterns to package their pads in order for purchasers to readily identify one company's pad from the others. To that end, McAirlaids advertises and markets its absorbent pads with McAirlaids' Trade Dress through, among other channels, brochures, trade shows, and the internet, and

directly to customers via an exclusive sales arrangement with Medline. Since 2005, McAirLaid's has spent substantial sums in advertising and marketing its absorbent pads with McAirLaid's Trade Dress in the United States. A representative advertisement for McAirLaid's absorbent pads which prominently features and promotes McAirLaid's Trade Dress is attached hereto as **Exhibit D** and incorporated by reference.

43. McAirLaid's has developed substantial goodwill in McAirLaid's Trade Dress, which is associated closely with McAirLaid's absorbent pads, including McAirLaid's-made, Genuine Ultrasorbs, and McAirLaid's Trade Dress serves to identify and distinguish McAirLaid's absorbent pads from those of others and to indicate the source, origin, sponsorship and affiliation of McAirLaid's-made absorbent pads.

Medline's Marketing of McAirLaid's Patented SuperCore® Technology and Trade Dress on McAirLaid's-made, Genuine Ultrasorbs

44. Since in or around 2006, Medline has marketed, advertised and sold McAirLaid's-made, Genuine Ultrasorbs that were manufactured exclusively by McAirLaid's using *both* the Ultrasorbs® mark *and* the SuperCore® mark, to identify McAirLaid's Patented SuperCore® Technology, to hospitals, clinics, nursing homes, intensive care units, critical care units, emergency rooms, home health-care stores and/or e-commerce purchaser sales.

45. A representative sample of Medline's early marketing materials, "the power of one" © 2007, is attached hereto as **Exhibit E** and incorporated by reference. Among other things, this marketing material states:

Supercore® thermo-bonded core does not come apart or bunch up like traditional disposable underpads

Advanced SuperCore® Absorbent Sheet

- thermo-bonded to provide better pad integrity and superior skin dryness

- Advanced thermo-bonded SuperCore® wicks moisture away from the skin and locks fluid away for increased patient dignity and better skin care

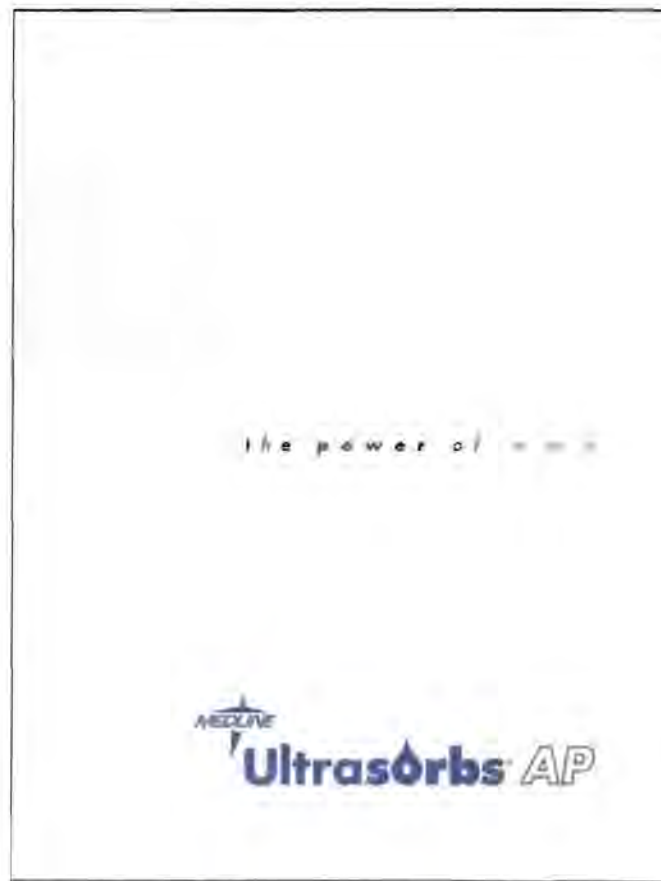
- Super absorbent – one [Ultrasorbs AP] equals the absorbency of three or more traditional underpads
- High-strength pad and film provide exceptional resistance to tearing and resulting linen changes^[1]

©2007 Medline Industries, Inc.

Medline and Ultrasorbs are registered trademarks of Medline Industries, Inc.

SuperCore is a registered trademark of McAirLaid's Vliesstoffe GmbH & Co. (emphasis in original).

46. Medline's "the power of one" © 2007 marketing materials, Exhibit E, also prominently display McAirLaid's Trade Dress:



¹ High tensile strength is yet another feature of McAirLaid's '702 Patented process which is identified by the SuperCore® mark. See Ex. A at col. 9, ll. 49-50 (claim 1 stating: "A method for producing an absorbent fiber web which is tear resistant . . ."); *id.* at col. 10, ll. 4-5 ("the tear strength of the fiber web is at least 0.12 kN/m").

47. In addition to direct sales through Medline, Medline uses a network of dealers, distributors, and resellers to sell products, including underpads marketed under both the SuperCore® and Ultrasorbs® marks, such as McAirlaids-made, Genuine Ultrasorbs.

48. Medline provides its dealers, distributors, and resellers with products for sale to end-users and encourages, induces and/or requires that dealers, distributors, and resellers use Medline's advertising and marketing materials when marketing, advertising and selling the associated products, including underpads marketed under both the SuperCore® and Ultrasorbs® marks, such as McAirlaids-made, Genuine Ultrasorbs.

49. Medline also has an apparent or actual partnership with its dealers, distributors, and resellers, and Medline exercises joint ownership or control over the products Medline supplies to its dealers, distributors, and resellers for sale to end-users.

50. Indeed, Medline created and provides to its dealers, distributors, and/or resellers a self-described "Marketing Kit" entitled "Qx Quality Customer Solutions For the Home Medical Dealer." A copy of this Marketing Kit is attached hereto as **Exhibit F** and incorporated by reference.

51. The Marketing Kit: (1) includes a module-based training program; (2) refers dealers, distributors, and/or resellers to Medline's on-line training curriculum where "staff can receive certification as incontinence care professionals (ICPs)"; and (3) refers dealers, distributors, and/or resellers to Medline's Product Reference Sheets that include underpads marketed under both the SuperCore® and Ultrasorbs® marks, such as McAirlaids-made, Genuine Ultrasorbs.

52. The Marketing Kit expressly encourages and induces dealers, distributors, and/or resellers to use Medline's marketing and advertising materials, stating: "Please encourage your

staff to familiarize themselves with these [Product Reference] sheets and use them to help explain products to customers over the phone and in your store.” Ex. F at 2.

53. The Marketing Kit also supports Medline’s and its dealers’, distributors’, and/or resellers’ apparent or actual partnership and joint control over the products. *See, e.g.*, Ex. F, Module 2 at 9 (“[E]xplain when the customer can expect to receive their order. (With Medline’s dropship program, customers often receive their delivery within 24 to 48 hours”); Ex. F, Module 3, at 8 (“With Medline’s on-line training curriculum, [your] staff can receive certification as incontinence care professionals (ICPs)”).

54. Medline’s Marketing Kit is merely one such example of Medline’s encouragement, inducement and/or apparent or actual partnership and joint control with respect to the products sold by Medline’s dealers, distributors, and/or resellers. On information and belief, Medline’s agreements with its dealers, distributors, and/or resellers further support Medline’s encouragement, inducement and/or apparent or actual partnership and joint control.

55. McAirlands has never expressly or impliedly authorized Medline or its dealers, distributors, or resellers to use McAirlands’ SuperCore® mark in connection with products that are not manufactured and sold by McAirlands.

56. McAirlands has never expressly or impliedly authorized Medline or its dealers, distributors, or resellers to use McAirlands’ SuperCore® mark in connection with any products manufactured by Medline or other third-parties for or on behalf of Medline.

57. McAirlands has never expressly or impliedly authorized Medline or its dealers, distributors, or resellers to use McAirlands’ Trade Dress in connection with products that are not manufactured and sold by McAirlands.

58. McAirlaids has never expressly or impliedly authorized Medline or its dealers, distributors, or resellers to use McAirlaids' Trade Dress in connection with any products manufactured by Medline or other third-parties for or on behalf of Medline.

Medline's Marketing of the Hospital Study & the Proven Clinical & Cost-Saving Benefits of McAirlaids-made, Genuine Ultrasorbs.

59. In March 2009, the Global Health Economic Projects, LLC released the results of its hospital study on the efficacy and cost-savings resulting from the use of McAirlaids-made, Genuine Ultrasorbs containing McAirlaids' Patented SuperCore® Technology.

60. The hospital study by Shannon, R. and LaJoie, J., entitled *Economic Impact of Ultrasorbs AP Absorbent Pads in Prevention of Hospital-Acquired Pressure Ulcers. Global Health Economic Projects, LLC and New York Methodist Hospital, Brooklyn NY. March 2009* ("Hospital Study") is attached hereto as **Exhibit G** and incorporated by reference.

61. Among other things, the Hospital Study found that during the period of the study at New York Methodist Hospital McAirlaids-made, Genuine Ultrasorbs containing McAirlaids' Patented SuperCore® Technology:

- [W]ere effective in reducing the incidence of hospital-acquired pressure ulcers by an average of 3% in incontinent patients admitted without a pressure sore.
- The cost savings is estimated at \$96.72 per incontinent patient admitted to the hospital.
- The annual budget impact is estimated at \$773,760.00 mainly due to the implementation of Ultrasorbs® AP pads.

62. With the clinical and cost-savings benefits established, Medline and its dealers, distributors, and/or resellers have relied heavily on this Hospital Study to advertise, market and sell McAirlaids-made, Genuine Ultrasorbs to hospitals, clinics, nursing homes, intensive care units, critical care units, emergency rooms, home health-care stores and/or e-commerce purchasers since March 2009.

63. A representative sample of Medline's advertising and marketing materials touting the clinical and cost-savings benefits of McAirLaid's-made, Genuine Ultrasorbs with McAirLaid's Patented SuperCore® Technology entitled "advanced technology for patient care Ultrasorbs® Drypads" © 2010, is attached hereto as **Exhibit H** and incorporated by reference. *See also* Ex. F at Ultrasorbs® AP, Ultrasorbs® ES, and Ultrasorbs UF Product Reference Sheets (using the SuperCore® mark and citing the Hospital Study and its clinical and cost saving benefits).

64. **Exhibit F** and **Exhibit H** market and advertise McAirLaid's-made, Genuine Ultrasorbs with McAirLaid's Patented SuperCore® Technology and the clinical and cost-saving benefits stating.

65. **Exhibit H**, for example, markets McAirLaid's-made, Genuine Ultrasorbs with McAirLaid's Patented SuperCore® Technology as follows:

Ultrasorbs are cost-effective

- Found in 1 in 3 hospitals today.
- Protects against leakage that leads to multiple linen and underpad changes.
- High-strength design reduces the need for multiple drawsheets for positioning.
- One Ultrasorbs does the job of up to 4 regular underpads.

Ultrasorbs respects individuals

- Thermo-bonded SuperCore™ pulls moisture away quickly and locks it away from the skin.
- Air-permeable, wrinkle-free design is quiet, comfortable and discreet.
- Enhanced odor control feature makes care more pleasant.

Ultrasorbs performs

- Compatible with low-air-loss mattresses used to prevent pressure ulcers.
- Catheter alternative when indwelling catheter usage is curtailed due to CAUTI concerns.
- Clinically shown to help maintain skin integrity as part of an overall pressure ulcer prevention program¹

Ask your Medline rep for a FREE sample of Ultrasorbs to try in your facility!

¹Shannon, R, Laidole, J. Economic Impact of Ultrasorbs® AP Absorbent Pads in Prevention of Hospital-Acquired Pressure Ulcers. Global Health Economic Projects, LLC and New York Methodist Hospital, Brooklyn NY, March 2009.

***Medline's False Advertisement, Infringement &
Counterfeiting of McAirlaids-made, Genuine Ultrasorbs***

66. McAirlaids is and has been the exclusive supplier of McAirlaids-made, Genuine Ultrasorbs.

67. Unbeknownst to McAirlaids, end-purchasers and end-users, in or around 2014, Medline began surreptitiously manufacturing Medline's China-made Ultrasorbs without McAirlaids' Patented SuperCore® Technology in China, and Medline and its dealers, distributors, and resellers, began marketing and selling Medline's China-made Ultrasorbs as counterfeits of McAirlaids-made, Genuine Ultrasorbs in the United States.

68. Unlike McAirlaids-made, Genuine Ultrasorbs which are advertised and sold based on the fact that they (1) are made in the U.S.A., (2) contain McAirlaids' Patented SuperCore® Technology, (3) have proven clinical and cost-saving benefits, and (4) contain McAirlaids' Trade Dress, Medline's China-made Ultrasorbs are counterfeits that are falsely advertised as being identical and indistinguishable from McAirlaids-made, Genuine Ultrasorbs.

69. Contrary to Medline's and its dealers', distributors', and resellers' false marketing and advertising, Medline's China-made Ultrasorbs (1) are not made in the U.S.A., (2) do not contain McAirlaids' Patented SuperCore® Technology, and (3) may or may not contain McAirlaids' Trade Dress.

70. Moreover, Medline's China-made Ultrasorbs are not clinically proven to "help maintain skin integrity as part of an overall pressure ulcer prevention program," are not proven to provide associated cost-savings, and were not tested under the Hospital Study that is used to market Medline's China-made Ultrasorbs.

71. Medline and its dealers', distributors', and resellers' false advertising and infringement of McAirlaids' Patented SuperCore® Technology is particularly pernicious because it jeopardizes patient health and safety. Over the years, many large, end-users, such as hospitals,

clinics, nursing homes, intensive care units, critical care units, and emergency rooms have come to rely on McAirLaid's-made, Genuine Ultrasorbs for its clinically proven benefits.

72. As a result of Medline and its dealers', distributors', and resellers' false advertising and infringement of McAirLaid's Patented SuperCore® Technology, patients are not being treated with McAirLaid's-made, Genuine Ultrasorbs with the clinical efficacy and cost-savings benefits proven in the advertised Hospital Study.

73. On information and belief, even though Medline's China-made Ultrasorbs are cheaper to manufacture and produce and are inferior in quality and performance, Medline and its dealers, distributors, and resellers are selling Medline's China-made Ultrasorbs at or around the same price as McAirLaid's-made, Genuine Ultrasorbs to avoid tipping end-users off to its counterfeit and to reap even greater ill-gotten profits at the cost of patient health and safety.

74. Prior to April 16, 2015, McAirLaid's was unaware of the fact that Medline was manufacturing China-made Ultrasorbs.

75. In a Memorandum in Support of a Motion to Strike file by counsel for Medline in *Medline I*, Medline's counsel stated that "Medline started sourcing Ultrasorbs® AP pads from a supplier other than McAirLaid's." *Medline I* (Dkt. # 24) at 2, n.1.

76. Medline also stated to McAirLaid's that it was reducing its purchases of McAirLaid's-made, Genuine Ultrasorbs from McAirLaid's, and has, in fact, reduced its purchases of McAirLaid's-made, Genuine Ultrasorbs.

77. Upon further investigation, McAirLaid's has discovered direct evidence that Medline and its dealers, distributors, and resellers have been actively engaged in a false advertising campaign and passing-off Medline's China-made Ultrasorbs as McAirLaid's-made, Genuine Ultrasorbs.

78. McAirLaid's has never expressly or impliedly authorized Medline or its dealers, distributors or resellers to use the SuperCore® mark in connection with Medline's China-made Ultrasorbs.

79. McAirLaid's has never expressly or impliedly authorized Medline or its dealers, distributors or resellers to reference or use McAirLaid's '702 Patented process in connection with Medline's China-made Ultrasorbs.

80. McAirLaid's has never expressly or impliedly authorized Medline or its dealers, distributors, and resellers to use McAirLaid's Trade Dress in connection with Medline's China-made Ultrasorbs.

Direct Evidence of Medline's False Advertising, False Designation of Source and Origin, Infringement & Counterfeiting of McAirLaid's-made, Genuine Ultrasorbs

Medline's Website

81. Medline's website currently markets and passes-off Medline's China-made Ultrasorbs as McAirLaid's-made, Genuine Ultrasorbs.

82. Although Medline currently sells its China-made Ultrasorbs along with McAirLaid's-made, Genuine Ultrasorbs, Medline's website and marketing materials do not distinguish Medline's China-made Ultrasorbs from McAirLaid's-made, Genuine Ultrasorbs. Rather, the marketing and advertising materials are intended to and do falsely represent and pass off Medline's China-made Ultrasorbs as McAirLaid's-made, Genuine Ultrasorbs.

83. Indeed, Medline's "Incontinence Care" page, © 2015, advertises Medline's China-made Ultrasorbs as "made in the U.S.A." and "Clinically Proven to Reduce Pressure Ulcers." <https://www.medline.com/products/incontinence-care/> (last accessed April 29, 2015). A copy of Medline's "Incontinence Care" page is attached hereto as **Exhibit I** and incorporated by reference.

84. In **Exhibit I**, Medline falsely represents the geographic source of Medline's China-made Ultrasorbs as "made in the U.S.A."

85. In **Exhibit I**, Medline also falsely represents that it (rather than McAirLaid's) is the source and origin of SuperCore®. At the bottom of the "Incontinence Care" page, Medline states that "Aloetouch, FitRight, Protection Plus, Restore, *SuperCore*, and Ultrasorbs are registered trademarks and Capri Plus is a trademark of Medline Industries." (emphasis added). Significantly, Aloetouch®, FitRight®, Protection Plus®, Restore®, Ultrasorbs® and Capri Plus®, are all registered trademarks of Medline. By including SuperCore® among the list of Medline registered trademarks, with no attribution to McAirLaid's, Medline is misrepresenting the source and origin of SuperCore® and McAirLaid's Patented SuperCore® Technology.

86. After falsely representing that Medline's China-made Ultrasorbs are "Clinically Proven to Reduce Pressure Ulcers," Medline's "Incontinence Care" page, **Exhibit I**, has a "Learn More" link directing the user to Medline's Ultrasorbs® Underpads page, © 2015. <https://www.medline.com/products/incontinence-care/ultrasorbs-drypads/> (last accessed April 29, 2015). A copy of Medline's Ultrasorbs® Underpads page is attached hereto as **Exhibit J** and incorporated by reference.

87. **Exhibit J** further falsely represents that Medline's China-made Ultrasorbs, which are currently being sold, contain the "Patented SuperCore®" manufactured under McAirLaid's '702 Patent:

Ultrisorbs AP® (Air-Permeable)
The original premium drypad



- Patented SuperCore® absorbent draws in moisture, locks it away from the skin and **feels dry to the touch in just minutes.***
- **Lies flat** when wet thanks to SuperCore® technology, without bunching, swelling or disintegrating.
- AquaShield film provides leakage protection that means **fewer linen changes—no double-padding.**
- Air permeable for **added comfort, dryness** and no embarrassing plastic film crinkling.
- Effective for use with low-air-loss mattress therapy—**protects the bedding and permits airflow.**

Ultrisorbs® UF (Ultra-Fresh)
Premium odor control drypad



- Antimicrobial Ultra-Fresh™ protection** **inhibits the growth of bacteria and yeasts that can cause odors.**
- **Locks odor-causing moisture away** in the SuperCore® layer.
- **Makes for a fresher room.**
- All the absorbency and dry comfort features of the original Ultrisorbs AP.

Ultrisorbs® ES (Extra-Strength)
Premium drypad & drawpad



- Lets you move, lift and position up to **375-pounds.**
- Innovative Lift Support backsheet technology **resists tearing.**
- Eliminates the need and expense of extra draw sheets and reusable underpads for most patients.
- All the absorbency and dry comfort features of the original Ultrisorbs AP.




88. Moreover, **Exhibit J** contains no attribution to McAirLaid's, either in connection with SuperCore® or McAirLaid's '702 Patent cited therein, and further supports Medline's false designation of source and origin for SuperCore®.

89. Each of the product pictures listed above on Medline's Ultrasorbs® Underpads page, **Exhibit J**, link to product detail and specification pages. A copy of each of Medline's Ultrasorbs® AP, UF, ES and US product detail pages is attached hereto as **Exhibit K** and incorporated by reference.

90. As with Medline's other advertising and marketing materials used in connection with Medline's China-made Ultrasorbs, these pages falsely pass off Medline's China-made Ultrasorbs as McAirLaid's-made, Genuine Ultrasorbs. See, e.g.,:

Ultrabsorbs AP Underpads



[View ULTRASORB1016 Shown](#)

[Download image](#)

Move your mouse over image or click to enlarge

Description Literature Multimedia Specs MSDS


- Ultrabsorbs APs are clinically shown to help maintain skin integrity as part of an overall pressure ulcer prevention program¹
- Extra-large patented², SuperCore[®] draws in moisture, locks it away from the skin and feels dry to the touch in just minutes
- AquaShield film provides leakage protection that means fewer linen changes; no double-padding needed
- Lies flat when wet thanks to SuperCore technology; without bunching, swelling, or disintegrating
- Air-permeable for skin health and added patient comfort
- Effective for use with low air loss mattress therapy; protects the bedding and permits air flow

1. Shannon, R; LaJoie, J. Economic Impact of Ultrabsorbs AP Absorbent Pads in Prevention of Hospital-Acquired Pressure Ulcers. Global Health Economic Projects, LLC and New York Methodist Hospital, Brooklyn NY, March 2008. 2. Manufactured under U.S. patent number 6,675,702

Ordering Information

Material	Description	Packaging
ULTRABULK2436	UNDERPAD, DRYPAD, ULTRASORBS AP, 24X36"	70/CS
ULTRABULK3136	UNDERPAD, DRYPAD, ULTRASORBS-AP, 31X36"	40/CS
ULTRASORB1016	UNDERPAD, DRYPAD, ULTRASORBS-AP, 10X16"	100/CS
ULTRASORB1824	UNDERPAD, DRYPAD, ULTRASORBS-AP, 18X24"	60/CS
ULTRASORB2436	UNDERPAD, DRYPAD, ULTRASORBS AP, 24X36"	70/CS
ULTRASORB3136	UNDERPAD, DRYPAD, ULTRASORBS AP, 31X36"	40/CS
ULTRASRB2436R	UNDERPAD, DRYPAD, ULTRASORBS AP, 24X36"	30/CS
ULTRASRB2436Z	UNDERPAD, DRYPAD, ULTRASORBS AP, 24X36"	10/BG
ULTRASRB3136Z	UNDERPAD, DRYPAD, ULTRASORBS AP, 31X36"	10/BG
ULTRASRB2436LB	UNDERPAD, DRYPAD, ULTRASORBS AP, 24X36, 14/SS	70/CS
ULTRASRB3136LB	UNDERPAD, DRYPAD, ULTRASORBS AP, 31X36"	40/CS

Ultrabsorbs AP Underpads



[View ULTRASORB1016 Shown](#)

[Download image](#)

Move your mouse over image or click to enlarge

Description Literature Multimedia Specs MSDS

Specifications:

Absorbency Level	Ultra
Absorbent Material	Thermo-Bonded Core
BRAND	Ultrabsorbs Ap, Ultrabsorbs
Backsheet Color	White
DIMENSIONS	36" X 24", 36" X 31", 18" X 10", 24" X 18"
HPIS Classification	500_90_10_0
Inner Pack	Bulk Bag, Inner Pack
Latex Free	Yes
MATERIAL	Air Permeable
UNSPSC code	42132101

Ordering Information

Material	Description	Packaging
ULTRABULK2436	UNDERPAD, DRYPAD, ULTRASORBS AP, 24X36"	70/CS
ULTRABULK3136	UNDERPAD, DRYPAD, ULTRASORBS-AP, 31X36"	40/CS
ULTRASORB1016	UNDERPAD, DRYPAD, ULTRASORBS-AP, 10X16"	100/CS
ULTRASORB1824	UNDERPAD, DRYPAD, ULTRASORBS-AP, 18X24"	60/CS
ULTRASORB2436	UNDERPAD, DRYPAD, ULTRASORBS AP, 24X36"	70/CS
ULTRASORB3136	UNDERPAD, DRYPAD, ULTRASORBS AP, 31X36"	40/CS
ULTRASRB2436R	UNDERPAD, DRYPAD, ULTRASORBS AP, 24X36"	30/CS
ULTRASRB2436Z	UNDERPAD, DRYPAD, ULTRASORBS AP, 24X36"	10/BG
ULTRASRB3136Z	UNDERPAD, DRYPAD, ULTRASORBS AP, 31X36"	10/BG
ULTRASRB2436LB	UNDERPAD, DRYPAD, ULTRASORBS AP, 24X36, 14/SS	70/CS
ULTRASRB3136LB	UNDERPAD, DRYPAD, ULTRASORBS AP, 31X36"	40/CS

Ultrisorbs Ultra Fresh Odor Control Drypads



[Download Image](#)

Move your mouse over image or click to enlarge

[Description](#) [Literature](#) [Multimedia](#) [Specs](#) [MSDS](#)

- With all the absorbency and dry comfort of the original Ultrisorbs AP®; these premium drypads feature antimicrobial Ultra-Fresh™ protection that helps to inhibit the growth of bacteria and yeasts that can cause odors*.
- The SuperCore® layer locks away odor-causing moisture.
- Indications: Use Ultrisorbs® UF for the same cases as Ultrisorbs AP, plus when odor control due to liquid incontinence is a concern.

*Ultra-Fresh is an EPA registered anti-microbial. This product does not protect users or others from disease-causing bacteria.

Ordering Information

Material	Description	Packaging
USAP2436UF	UNDERPAD, ULTRASORBS W/ULTRAFRESH, 24X36"	70/CS
USAP2436UFBLK	UNDERPAD, ULTRASORBS W/UF, 24"X36", BULK	70/CS
USAP3136UF	UNDERPAD, ULTRASORBS W/ULTRAFRESH, 31X36"	40/CS

Ultrisorbs Ultra Fresh Odor Control Drypads



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Move your mouse over image or click to enlarge

[Description](#) [Literature](#) [Multimedia](#) [Specs](#) [MSDS](#)

Specifications


Absorbency Level	Ultra
Absorbent Material	Thermo-Bonded Core
BRAND	Ultrisorbs Ultra Fresh
Backsheet Color	White
DIMENSIONS	36" X 24", 36" X 31"
HPIS Classification	600_60_10_0
Inner Pack	Inner Pack
Latex Free	Yes
MATERIAL	Air Permeable
UNSPSC code	42132101

Ordering Information

Material	Description	Packaging
USAP2436UF	UNDERPAD, ULTRASORBS W/ULTRAFRESH, 24X36"	70/CS
USAP2436UFBLK	UNDERPAD, ULTRASORBS W/UF, 24"X36", BULK	70/CS
USAP3136UF	UNDERPAD, ULTRASORBS W/ULTRAFRESH, 31X36"	40/CS

Ultrisorbs Extra Strength Drypad and Drawpad

[Description](#)
[Literature](#)
[Multimedia](#)
[Specs](#)
[MSDS](#)



- Help eliminate the need and expense of extra draw sheets and reusable underpads for most patients with this extra strength drypad and drawpad.
- Ultrisorbs® ES let you move, lift and position up to 375 pounds.
- Innovative LiftSupport backsheet technology resists tearing.
- All the absorbency and dry comfort features of the original Ultrisorbs AP®.
- Indications: Use Ultrisorbs ES for the same cases as Ultrisorbs AP, plus when repositioning a patient is a concern.
- USAP3136ESLP has an extra low profile.
- Patents Pending.

[Download image](#)


Move your mouse over image or click to enlarge

Ordering Information

Material	Description	Packaging
USAP2436ES	UNDERPAD, XTRA STRONG, ULTRASORBS ES, 24X36	60/CS
USAP3136ES	UNDERPAD, XTRA STRONG, ULTRASORBS ES, 31X36	40/CS
USAP3136ESH	UNDERPAD, XTRA STRONG, ULTRASORBS ES, 31X36	1/EA
USAP3136ESLP	UNDERPAD, DRYPAD, ULTRASORB ES-LP, 31X36	50/CS

Ultrisorbs Extra Strength Drypad and Drawpad

[Description](#)
[Literature](#)
[Multimedia](#)
[Specs](#)
[MSDS](#)



Specifications

Absorbency Level	Ultra
Absorbent Material	Thermo-Bonded Core
BRAND	Extrasorbs Extra Strong, Ultrisorbs Extra Strong
Backsheet Color	White
DIMENSIONS	36" X 24", 36" X 31"
HPIS Classification	500_90_10_0
Inner Pack	Inner Pack
Latex Free	Yes
MATERIAL	Air Permeable
UNGPOC code	42132101

[Download image](#)

Move your mouse over image or click to enlarge

Ordering Information

Material	Description	Packaging
USAP2436ES	UNDERPAD, XTRA STRONG, ULTRASORBS ES, 24X36	60/CS
USAP3136ES	UNDERPAD, XTRA STRONG, ULTRASORBS ES, 31X36	40/CS
USAP3136ESH	UNDERPAD, XTRA STRONG, ULTRASORBS ES, 31X36	1/EA
USAP3136ESLP	UNDERPAD, DRYPAD, ULTRASORB ES-LP, 31X36	50/CS

Ultrisorbs Ultra Strength Drypad & Drawpad



Download Image

Move your mouse over image or click to enlarge

Description Literature Multimedia Specs MSDS

- Help eliminate the need and expense of extra draw sheets and reusable underpads for most patients with this ultra strength drypad and drawpad.
- Ultrisorbs® US, specially designed for bariatric patients, lets you move, lift and position up to 800 pounds.
- Larger 31" x 57" (79 cm x 145 cm) option with extended side panels available.
- Innovative LiftSupport backsheets technology resists tearing.
- All the absorbency and dry comfort features of the original Ultrisorbs AP.
- Indications: Use Ultrisorbs US for the same cases as Ultrisorbs AP, plus when repositioning a patient is a concern.
- Patents Pending.

Ordering Information

Material	Description	Packaging
USAP3136US	UNDERPAD, DRYPAD, ULTRASORB AP 600, 31X36	40/CS
USAP3157US	UNDERPAD, DRYPAD, ULTRASORB AP 600, 31X57	40/CS

Ultrisorbs Ultra Strength Drypad & Drawpad



Download Image

Move your mouse over image or click to enlarge

Description Literature Multimedia Specs MSDS

Specifications	
Absorbency Level	Ultra
Absorbent Material	Thermo-Bonded Core
BRAND	Ultrisorbs Ultra Strong
Backsheet Color	White
DIMENSIONS	36" X 31", 31" X 57"
HPIS Classification	600_90_10_0
Inner Pack	Inner Pack
Latex Free	Yes
MATERIAL	Air Permeable
UNSPSC code	42132101

Ordering Information

Material	Description	Packaging
USAP3136US	UNDERPAD, DRYPAD, ULTRASORB AP 600, 31X36	40/CS
USAP3157US	UNDERPAD, DRYPAD, ULTRASORB AP 600, 31X57	40/CS

91. The above product detail pages also contain videos and/or images of McAirLaid's made, Genuine Ultrisorbs and allow the user to zoom into each picture to view McAirLaid's prominently displayed Trade Dress.

92. Medline uses all of the above webpages in furtherance of its counterfeiting of McAirLaid's-made, Genuine Ultrasorbs.

***Purchases from Medline Confirm Infringement, Counterfeiting,
False Advertising & False Designation of Origin***

Medline's China-made Ultrasorbs Purchase 1

93. On April 23, 2015, McAirLaid's purchased "Medline Ultrasorbs AP Underpads, White, 24 Inch x 36 Inch, 10 Count (Pack of 7) by Medline" from Medline via Amazon.com with fulfillment by Amazon.com on behalf of Medline ("Medline's China-made Ultrasorbs Purchase 1").

94. Medline is responsible for the advertising and marketing material, product description, and product details associated with Medline's China-made Ultrasorbs Purchase 1 on Amazon.com.

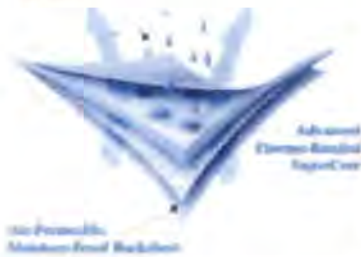
95. The "Product Description" and "Product Details" for Medline's China-made Ultrasorbs Purchase 1 advertised McAirLaid's-made, Genuine Ultrasorbs for sale, not Medline's China-made Ultrasorbs.

96. At the time of purchase, the "Product Description" and "Product Details" were as follows:

Product Description

Experience the confidence that an Ultrasorbs AP underpad can provide! Our vision is to improve dignity and overall quality of life for those with incontinence. Unlike some underpads that only protect the furniture, Ultrasorbs AP was designed to lock away moisture fast so it helps keep skin drier.

Soft, Non-Stretch
Top Sheet



INSTANTLY LOCKS AWAY WETNESS

What is the value of a good night's sleep? Ultrasorbs uses high absorbent technology to draw moisture away from the skin. And - it does this with a thin comfortable sheet. Ultrasorbs manages moisture over time so you can get a good night's sleep.

TRUSTED BY PROFESSIONALS

Ultrasorbs have been a trusted part of patient care for years.

HIGH PERFORMANCE = COST EFFECTIVE

Using Ultrasorbs help protects against leakage that leads to multiple linen and underpad changes. In fact, one Ultrasorbs does the job of up to 4 regular underpads.

COMFORTABLE AND DISCREET

Ultrasorbs respects individuals. Ultrasorbs has an air-permeable, crinkle-free design that is quiet, comfortable and discreet.

Try Ultrasorbs and experience the Ultrasorbs difference for yourself.

Features

- Super absorbent core technology draws in moisture, locks it away from the skin, and feels dry to the touch in just minutes
- Micro-pore film provides leakage protection that means fewer linen changes; no double-padding needed
- Lies flat when wet thanks to advanced core technology, and does not bunch, swell, or disintegrate when wet
- Air-permeable for skin health and added

Product Details

Product Dimensions: 3.8 x 3.8 x 3.8 inches ; 2.4 pounds

Shipping Weight: 13.6 pounds (View shipping rates and policies)

Shipping: This item is also available for shipping to select countries outside the U.S.

Origin: USA

Shipping Advisory: This item must be shipped separately from other items in your order. Additional shipping charges will not apply.

ASIN: B00IZUJSPK

Average Customer Review: (2 customer reviews)

Amazon Best Sellers Rank: #245,147 in Health & Personal Care (See Top 100 in Health & Personal Care)

Would you like to give feedback on images or tell us about a lower price?

97. As shown above, the product was advertised for sale as McAirLaid's-made, Genuine Ultrasorbs, not Medline's China-made Ultrasorbs. Consistent only with McAirLaid's-made, Genuine Ultrasorbs, the advertising states that the product contains "Advanced Thermo-Bonded SuperCore[®]," that SuperCore is a "Super absorbent core technology [that] draws in moisture, lock it away from the skin, and feels dry to the touch in just minutes," and "Lies flat when wet thanks to advanced core technology." The advertisement further represents that the product has been a "trusted part of patient care for years" (referring to McAirLaid's-made, Genuine Ultrasorbs) and identifies the product "**Origin**" as "USA," not China. Moreover, the

advertisement uses a product picture of McAirLaid's-made, Genuine Ultrasorbs with McAirLaid's Trade Dress.

98. After ordering the advertised McAirLaid's-made, Genuine Ultrasorbs with the above representations, McAirLaid's did not receive the advertised product. Instead, McAirLaid's received Medline's China-made Ultrasorbs confirming Medline's infringing use of SuperCore®, false advertising, counterfeiting and false designation of source and origin.

99. The transaction history associated with Medline's China-made Ultrasorbs Purchase 1 and pictures of the product received through this purchase, are attached hereto as **Exhibit L** and incorporated by reference.

100. The following pictures in **Exhibit L** demonstrate that Medline's China-made Ultrasorbs were sent directly from Medline to Amazon on or before December 11, 2014.



101. The SKU "Ultrasorbs2436," is the same SKU used to identify McAirLaid's-made, Genuine Ultrasorbs with Patented SuperCore® Technology and McAirLaid's Trade Dress.

102. The use of identical SKUs further contributes to purchaser confusion.

103. The lot number EW20141017-146 confirms, upon information and belief, that these China-made Ultrasorbs were manufactured on October 17, 2014:



104. The product received with Medline's China-made Ultrasorbs Purchase 1 is also conspicuously marked as "Made in China," confirming Medline's false designation of geographic origin:



105. This false designation of geographic origin is not only a violation of Section 43(a) of the Lanham Act, it is a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and a violation of Amazon's General Listing Restrictions, available at http://www.amazon.com/gp/help/customer/display.html/ref=hp_rel_topic?ie=UTF8&nodeId=201737330:

General Listing Restrictions

Category Restrictions

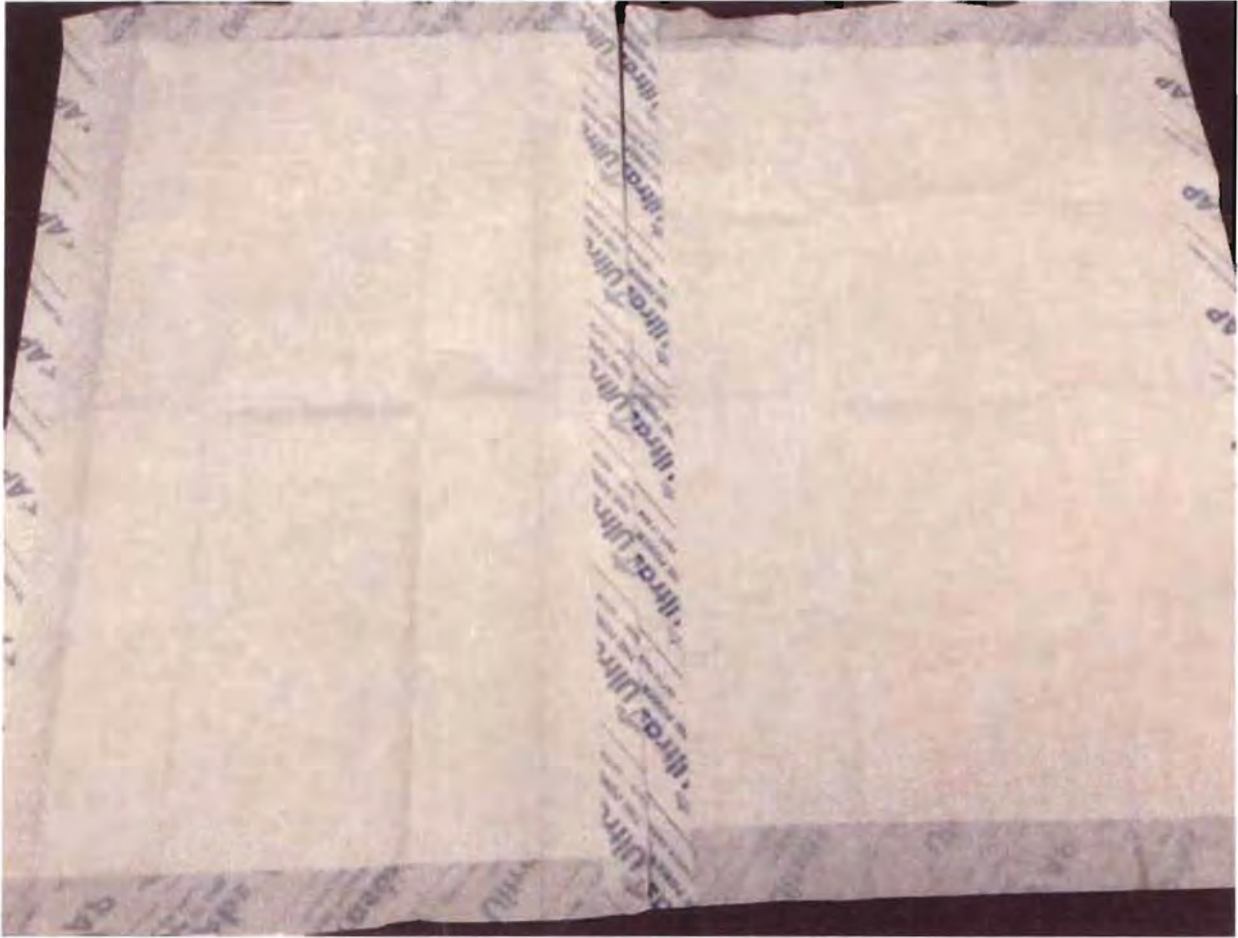
Made in the U.S.A. Any product that you describe, advertise or label as "Made in the U.S.A." must be all or virtually all made in the United States. For more information, see the Federal Trade Commission's Enforcement Policy Statement on U.S. Origin Claims and Advertising and Marketing on the Internet: Rules of the Road. See also the discussions of "Animal Furs and Skins," "Textile Descriptions," and "Wool Product Descriptions" on Listing Restrictions That Require Statements or Disclosures for more information on required disclosures of country of origin.

106. By using McAirLaid's-made, Genuine Ultrasorbs marketing materials to pass off Medline's China-made Ultrasorbs, Medline is engaged in counterfeiting through the use of identical, indistinguishable advertisements.

107. The product received from Medline's China-made Ultrasorbs Purchase 1 and McAirLaid's-made, Genuine Ultrasorbs are displayed, side-by side below:

Medline's China-made Ultrasorbs

McAirlaids-made, Genuine Ultrasorbs



Medline's China-made Ultrasorbs

McAirlaids-made, Genuine Ultrasorbs



Medline's China-made Ultrasorbs

McAirlaids-made, Genuine Ultrasorbs



108. After receiving Medline's China-made Ultrasorbs, a purchaser would discover that the product was made in China, rather than the U.S.A., and that the embossed pattern varies. Otherwise, McAirlaids-made, Genuine Ultrasorbs and Medline's China-made Ultrasorbs are indistinguishable in appearance, size, weight and feel. The purchaser could only conclude, based on the false advertising, that both contain McAirlaids' Patented SuperCore® Technology.

109. Even though the embossed pattern varies, and the geographic origin is not as advertised, the purchaser could reasonably conclude that McAirlaids' has adopted a new trade dress pattern and, like so many other U.S. manufacturers, has started to manufacture products overseas.

110. If and when purchasers discover that the China-made Ultrasorbs are inferior in quality and performance, purchasers would reasonably, but falsely, attribute that poor performance to a diminishment in the quality and performance of McAirlaids' Patented SuperCore® Technology based on Medline's false advertising.

Direct Evidence of Medline's Dealers, Distributors and/or Resellers' False Advertising, Infringement & Counterfeiting of McAirlaids-made, Genuine Ultrasorbs

Medline's China-made Ultrasorbs Purchase 2

111. On April 20, 2015, McAirlaids purchased "Medline Ultrasorbs AP Premium Disposable DryPad – Ultrasorbs AP, 24" x 36" – Qty of 70" from Medline dealer, distributor or reseller VetmedUSA via Amazon.com with fulfillment by VetmedUSA on behalf of Medline ("Medline's China-made Ultrasorbs Purchase 2").

112. Medline is responsible for its dealers', distributors' and resellers' marketing material, product description, product features, and product details associated with Medline's China-made Ultrasorbs Purchase 2 on Amazon.com.

113. The "Product Description" for Medline's China-made Ultrasorbs Purchase 2 advertised McAirlaids-made, Genuine Ultrasorbs for sale, not Medline's China-made Ultrasorbs. At the time of purchase, the "Product Description" was as follows:

Product Description

Ultrasorbs AP are clinically shown to help maintain skin integrity as part of an overall pressure ulcer prevention program¹ Extra-large patented², SuperCore draws in moisture, locks it away from the skin and feels dry to the touch in just minutes AquaShield film provides leakage protection that means fewer linen changes; no double-padding needed Lies flat when wet thanks to SuperCore technology, without

114. At the time of purchase, VetmedUSA used the following image, prominently displaying McAirlaids' Trade Dress to advertise the sale of Medline's China-made Ultrasorbs Purchase 2:



115. As shown above, the product was advertised for sale as McAirLaid's-made, Genuine Ultrasorbs, not Medline's China-made Ultrasorbs. Consistent only with McAirLaid's-made, Genuine Ultrasorbs, the advertising states that "Ultrasorbs AP are clinically shown to help maintain skin integrity as part of an overall pressure ulcer prevention program¹[.] Extra-large patented², SuperCore[®] draws in moisture, locksit[sic] away from the skin and feels dry to the touchin[sic] just minutes . . . Lies flat when wet thanks to SuperCore[®] technology."

116. It is clear that the advertising for Medline's China-made Ultrasorbs Purchase 2 was copied and pasted directly from Medline's marketing materials and product description from Medline's "Ultrasorbs AP Underpads" webpage. Indeed, this product description even contains the same grammatical errors ("touchin[sic]" and "locksit[sic]"). Compare Complaint, ¶¶ 113 and 90. The only difference is the removal of the superscript with footnotes 1 and 2 which is a mere formatting change from copying and pasting the text.

117. After ordering the advertised McAirLaid's-made, Genuine Ultrasorbs with the above representations, McAirLaid's did not receive the advertised product. Instead, McAirLaid's received Medline's China-made Ultrasorbs confirming Medline's and its dealer's, distributor's

or reseller's infringing use of SuperCore®, false advertising, counterfeiting and false designation of source and origin.

118. The advertisement and transaction history associated with Medline's China-made Ultrasorbs Purchase 2 and pictures of the product received through this purchase, are attached hereto as **Exhibit M** and incorporated by reference.

119. By using McAirLaid's-made, Genuine Ultrasorbs marketing materials to pass off Medline's China-made Ultrasorbs, Medline and its dealer, distributor and reseller are engaged in counterfeiting through the use of identical, indistinguishable advertisements.

120. The product received from Medline's China-made Ultrasorbs Purchase 2 is identical to the product received from Medline's China-made Ultrasorbs Purchase 1.

121. After receiving Medline's China-made Ultrasorbs, a purchaser would discover that the product was made in China and the embossed pattern varies from the prominently advertised McAirLaid's Trade Dress. Otherwise, McAirLaid's-made, Genuine Ultrasorbs and Medline's China-made Ultrasorbs are indistinguishable in appearance, size, weight and feel. The purchaser could only conclude, based on the false advertising, that both contain McAirLaid's Patented SuperCore® Technology, and falsely concluded that it is clinically shown to help maintain skin integrity as part of an overall pressure ulcer prevention program.

122. Even though the embossed pattern varies, the purchaser could reasonably conclude that McAirLaid's has adopted a new trade dress pattern and, like so many other U.S. manufacturers, has started to manufacture products overseas.

123. If and when purchasers discover that the China-made Ultrasorbs are inferior in quality and performance, purchasers would reasonably, but falsely, attribute that poor performance to a diminishment in the quality and performance of McAirLaid's Patented

SuperCore® Technology based on Medline's and its dealers', distributors' or resellers' false advertising (which derives from Medline's false advertising).

Medline's China-made Ultrasorbs Purchase 3

124. On April 20, 2015, McAirLaid also purchased "Medline USAP3136ES Ultrasorbs Extra Strength Drypad & Drawpad, White (Case of 40)" from Medline dealer, distributor or reseller AllDayMedical via Amazon.com with fulfillment by AllDayMedical on behalf of Medline ("Medline's China-made Ultrasorbs Purchase 3").

125. On McAirLaid's Packing List for Medline's China-made Ultrasorbs Purchase 3, "All Day Medical" is identified as an "(Internet Account)." Based on the address for "All Day Medical" shown thereon, it appears that AllDayMedical is owned by the Synergy® HomeCare franchise.

126. Medline is responsible for its dealers', distributors' and resellers' marketing material, product description, product features, and product details associated with Medline's China-made Ultrasorbs Purchase 3 on Amazon.com.

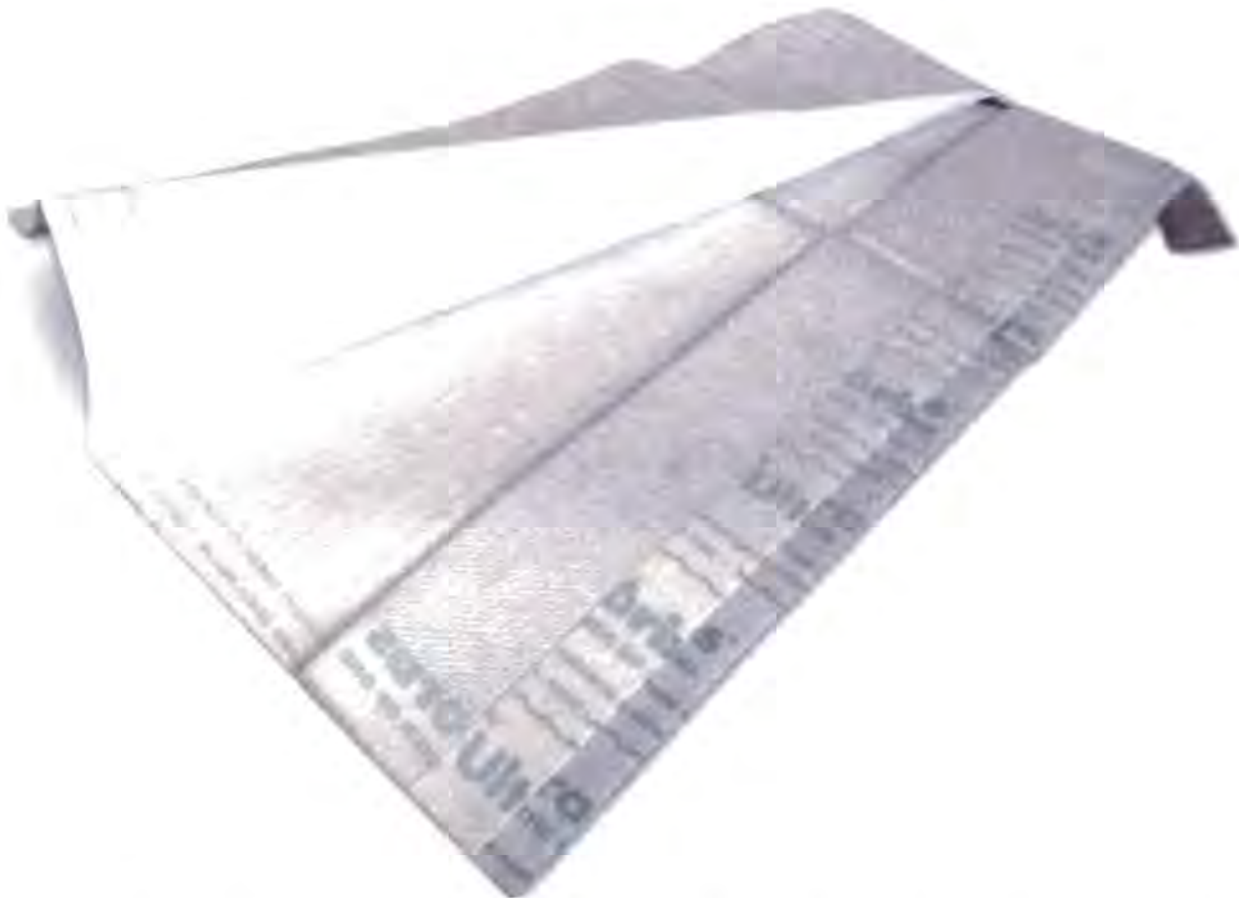
127. The "Product Description" for Medline's China-made Ultrasorbs Purchase 3 advertised McAirLaid-made, Genuine Ultrasorbs for sale, not Medline's China-made Ultrasorbs. At the time of purchase, the "Product Description" was as follows:

Product Description

Help eliminate the need and expense of extra draw sheets and reusable underpads for most patients with this extra strength drypad and drawpad.

- Ultrasorbs ES let you move, lift and position up to 375 pounds.
- Innovative LiftSupport backsheet technology resists tearing.
- All the absorbency and dry comfort features of the original Ultrasorbs AP.
- Indications: Use Ultrasorbs ES for the same cases as Ultrasorbs AP, plus when repositioning a patient is a concern.
- USAP3136ESLP has an extra low profile.
- Patents Pending.

128. At the time of purchase, AllDayMedical used the following image, prominently displaying McAirLaid's Trade Dress to advertise for sale Medline's China-made Ultrasorbs Purchase 3:



129. As shown above, the product was advertised for sale as McAirlaids-made, Genuine Ultrasorbs, not Medline's China-made Ultrasorbs. Consistent only with McAirlaids-made, Genuine Ultrasorbs, the advertising states that it has "All the absorbency and dry comfort features of the original Ultrasorbs AP," which was made only by McAirlaids, and prominently displays McAirlaids-made, Genuine Ultrasorbs in the product image.

130. The advertising for Medline's China-made Ultrasorbs Purchase 3 came directly from Medline's marketing materials.

131. After ordering the advertised McAirlaids-made, Genuine Ultrasorbs with the above representations, McAirlaids did not receive the advertised product. Instead, McAirlaids received Medline's China-made Ultrasorbs confirming Medline's and its dealer's, distributor's or reseller's infringing use of SuperCore®, false advertising, counterfeiting and false designation of source and origin.

132. The advertisement and transaction history associated with Medline's China-made Ultrasorbs Purchase 3 and pictures of the product received through this purchase, are attached hereto as **Exhibit N** and incorporated by reference.

133. By using McAirloads-made, Genuine Ultrasorbs marketing materials to pass off Medline's China-made Ultrasorbs, Medline and its dealer, distributor and reseller are engaged in counterfeiting through the use of identical, indistinguishable advertisements.

134. The product received from Medline's China-made Ultrasorbs Purchase 3 is identical in appearance to McAirloads-made, Genuine Ultrasorbs ES except for the embossed pattern, which is identical to the pattern in products received from Medline's China-made Ultrasorbs Purchases 1 and 2, and the embossed pattern varies from the prominently displayed McAirloads' Trade Dress advertised.

135. Even though the embossed pattern varies, the purchaser could reasonably conclude that McAirloads' has adopted a new trade dress pattern and has, like so many other U.S. manufacturers, started to manufacture products overseas.

136. If and when purchasers discover that the China-made Ultrasorbs are inferior in quality and performance, purchasers would reasonably, but falsely, attribute that poor performance to a diminishment in the quality and performance of McAirloads' Patented SuperCore® Technology based on Medline's and its dealer's, distributor's or reseller's false advertising (which derives from Medline's false advertising).

Medline Exacerbates Confusion By Using Identical Advertising & Intermingling Inferior China-Made Ultrasorbs & McAirloads-made, Genuine Ultrasorbs in Order Fulfillment

137. Significantly, Medline and its dealers, distributors and resellers are still selling and marketing McAirloads-made, Genuine Ultrasorbs.

138. The three purchases described herein represent an extremely small sampling of the marketplace. Even using an online marketplace such as Amazon.com, a search for “Ultrasorbs pads” returns 246 results, and for any given product there are often numerous sellers.

139. On information and belief, all or nearly all of the advertisements for Ultrasorbs are copied from or derive directly from Medline’s marketing materials for McAirLaid’s-made, Genuine Ultrasorbs.

140. Unfortunately for purchasers, Medline and its dealers, distributors and resellers are and have been fulfilling orders received based on advertisements of McAirLaid’s-made, Genuine Ultrasorbs with either McAirLaid’s-made, Genuine Ultrasorbs with Patented SuperCore® Technology or Medline’s China-made Ultrasorbs without Patented SuperCore® Technology throughout the marketplace.

141. Medline’s and/or its dealers, distributors and resellers intermingling of inferior Medline’s China-made Ultrasorbs which are *not* clinically proven to reduce the incidence of ulcers and provide accompanying cost-saving benefits and do not contain McAirLaid’s Patented SuperCore® Technology, with McAirLaid’s-made, Genuine Ultrasorbs, which *are* clinically proven to reduce the incidence of ulcers and provide accompanying cost-saving benefits and *do* contain McAirLaid’s Patented SuperCore® Technology and Trade Dress, is causing actual confusion, a likelihood of confusion and damage to McAirLaid’s and the goodwill in its SuperCore® mark, its ’702 Patented process, and McAirLaid’s Trade Dress.

142. McAirLaid’s has been damaged as a consequence of Medline’s and its dealers’, distributors’, and resellers’ false advertising, false designation of source and origin, infringement and counterfeiting of McAirLaid’s Patented SuperCore® Technology and McAirLaid’s Trade Dress. Medline’s and its dealers’, distributors’, and resellers’ wrongful conduct, as alleged herein, will cause McAirLaid’s further immediate and irreparable injury, loss and damage for

which McAirLaid's will have no adequate remedy at law, and Medline and its dealers, distributors, and resellers should be preliminarily and permanently enjoined from engaging in such wrongful conduct. Medline's and its dealers', distributors', and resellers' false advertising, false designation of source and origin, infringement and counterfeiting of McAirLaid's Patented SuperCore® Technology and McAirLaid's Trade Dress, show willful misconduct, malice, fraud, wantonness, oppression, or an entire lack of care which would raise the presumption of conscious indifference to its consequences.

COUNT I

(Trademark and Trade Dress Infringement and Counterfeiting Under 15 U.S.C. § 1114)

143. McAirLaid's repeats and specifically incorporates the allegations asserted in each of the preceding paragraphs, as if fully set forth herein.

144. McAirLaid's owns U.S. Registration No. 2,516,219 for McAirLaid's SuperCore® word mark. McAirLaid's has used and continues to use SuperCore® in connection with its specified goods and/or services in interstate commerce.

145. McAirLaid's SuperCore® mark, as registered, is nonfunctional, inherently distinctive or has acquired secondary meaning and is associated in the mind of the public uniquely with McAirLaid's and has been and will continue to be known throughout the United States as identifying and distinguishing McAirLaid's goods and/or services.

146. McAirLaid's owns U.S. Registration No. 4,104,123 for McAirLaid's Trade Dress, and McAirLaid's has used and continues to use its Trade Dress in connection with its specified goods and/or services in interstate commerce.

147. McAirLaid's Trade Dress, as registered, is nonfunctional, inherently distinctive or has acquired secondary meaning and is associated in the mind of the public uniquely with McAirLaid's. McAirLaid's Trade Dress has been and will continue to be known throughout the United States as identifying and distinguishing McAirLaid's goods and/or services.

148. Without authorization, Medline has used and continues to use exact copies of McAirLaid's SuperCore® mark and Trade Dress in commerce, in connection with the sale, offering for sale, distribution, or advertising of Medline's China-made Ultrasorbs in a manner that is likely to cause confusion, or to cause mistake, or to deceive, and in a manner that is intended to cause confusion, or to cause mistake, or to deceive.

149. Medline's importing, distributing, selling and marketing of its China-made Ultrasorbs in connection with McAirLaid's SuperCore® mark and Trade Dress infringes McAirLaid's exclusive rights in and to McAirLaid's SuperCore® mark and Trade Dress in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

150. Medline's use of the SuperCore® mark and Trade Dress in connection with the sale, offering for sale, distribution, or advertising of Medline's China-made Ultrasorbs misleads, confuses and/or deceives consumers into believing they are purchasing McAirLaid-made, Genuine Ultrasorbs that (1) are made by McAirLaid; (2) are made in the U.S.A., (3) contain McAirLaid's Patented SuperCore® Technology, (4) have proven clinical and cost-saving benefits, and (5) contain McAirLaid's Trade Dress. Instead, purchasers receive Medline's China-made Ultrasorbs that (1) are not made by McAirLaid; (2) are not made in the U.S.A., (3) do not contain McAirLaid's Patented SuperCore® Technology, (4) are not proven to have the clinical and cost-saving benefits of McAirLaid-made, Genuine Ultrasorbs, and (5) may or may not contain McAirLaid's Trade Dress.

151. Medline has unlawfully used McAirLaid-made, Genuine Ultrasorbs advertising and McAirLaid's SuperCore® mark and Trade Dress to pass off, falsely promote and create a market for Medline's China-made Ultrasorbs and reduce sales of McAirLaid-made, Genuine Ultrasorbs.

152. Medline's unauthorized use, adoption, appropriation and/or copying of McAirlaids' SuperCore® mark and Trade Dress deprives McAirlaids of its exclusive rights to control, and benefit from, McAirlaids' SuperCore® mark and Trade Dress.

153. If permitted to continue, Medline's actions will nullify McAirlaids' rights to the exclusive use of McAirlaids' SuperCore® mark and Trade Dress, free from infringement, and will have a substantial and adverse effect on McAirlaids' existing and projected future interstate business of marketing and selling its absorbent pads bearing McAirlaids' SuperCore® mark and Trade Dress in violation of 15 U.S.C. § 1114.

154. Medline's unauthorized use of McAirlaids' SuperCore® mark and Trade Dress has resulted in Medline unfairly benefiting from advertising and promotion of McAirlaids' SuperCore® mark and Trade Dress and from the resultant goodwill in McAirlaids' SuperCore® mark and Trade Dress.

155. By reason of and as a direct and proximate result of Medline's trademark and trade dress infringement, Medline has caused damage to McAirlaids' business, reputation and goodwill and has diverted business and sales from McAirlaids to Medline.

156. McAirlaids is entitled to an accounting and to recover from Medline all damages, without limitation, that McAirlaids has suffered due to Medline's infringing conduct, including Medline's profits and damages suffered by McAirlaids in an amount to be proven at trial, the costs of the action, treble damages under 15 U.S.C. § 1117(a), treble damages and reasonable attorneys' fees for Medline's use of the counterfeit SuperCore® mark and counterfeit Trade Dress under 15 U.S.C. § 1117(b), and/or statutory damages for use of the counterfeit mark and/or Trade Dress in lieu of damages and profits under 15 U.S.C. § 1117(c).

157. Medline's actions are willful and deliberate and amount to exceptional circumstances, justifying an award of attorneys' fees to McAirLaid's pursuant to 15 U.S.C. § 1117(a).

158. Unless enjoined pursuant to 15 U.S.C. § 1116, Medline's conduct will continue to cause McAirLaid's irreparable harm for which there exists no adequate remedy at law.

COUNT II

(Common Law Unfair Competition/Trademark & Trade Dress Infringement)

159. McAirLaid's repeats and specifically incorporates the allegations asserted in each of the preceding paragraphs, as if fully set forth herein.

160. McAirLaid's is the owner of all right and title to the distinctive McAirLaid's SuperCore® mark and Trade Dress.

161. McAirLaid's SuperCore® mark is nonfunctional, inherently distinctive or has acquired secondary meaning and is associated in the mind of the public uniquely with McAirLaid's.

162. McAirLaid's Trade Dress is nonfunctional, inherently distinctive or has acquired secondary meaning and is associated in the mind of the public uniquely with McAirLaid's.

163. McAirLaid's has prior and exclusive rights to use McAirLaid's SuperCore® mark and Trade Dress to identify, market, promote and sell its medical and hygienic absorbent pads, including absorbent incontinence bed pads.

164. Without authorization, Medline uses exact copies of McAirLaid's SuperCore® mark and Trade Dress in commerce, in connection with the sale, offering for sale, distribution, or advertising of Medline's China-made Ultrasorbs in a manner that is likely to cause confusion, or to cause mistake, or to deceive, and in a manner that is intended to cause confusion, or to cause mistake, or to deceive.

165. Medline has unlawfully used McAirLaid's-made, Genuine Ultrasorbs advertising and McAirLaid's SuperCore® mark and Trade Dress to pass off, falsely promote and create a market for Medline's China-made Ultrasorbs and reduce sales of McAirLaid's-made, Genuine Ultrasorbs.

166. Medline's use of the SuperCore® mark and Trade Dress in connection with the sale, offering for sale, distribution, or advertising of Medline's China-made Ultrasorbs misleads, confuses and/or deceives consumers into believing they are purchasing McAirLaid's-made, Genuine Ultrasorbs that (1) are made by McAirLaid's; (2) are made in the U.S.A., (3) contain McAirLaid's Patented SuperCore® Technology, (4) have proven clinical and cost-saving benefits, and (5) contain McAirLaid's Trade Dress. Instead, purchasers receive Medline's China-made Ultrasorbs that (1) are not made by McAirLaid's; (2) are not made in the U.S.A., (3) do not contain McAirLaid's Patented SuperCore® Technology, (4) are not proven to have the clinical and cost-saving benefits of McAirLaid's-made, Genuine Ultrasorbs, and (5) may or may not contain McAirLaid's Trade Dress.

167. Medline's importing, distributing, selling and marketing of its China-made Ultrasorbs in connection with McAirLaid's SuperCore® mark and Trade Dress infringes McAirLaid's exclusive rights in and to McAirLaid's SuperCore® mark and Trade Dress in violation of the common law of the Commonwealth of Virginia.

168. Medline's unauthorized use, adoption, appropriation and/or copying of McAirLaid's SuperCore® mark and Trade Dress deprives McAirLaid's of its exclusive rights to control, and benefit from, McAirLaid's SuperCore® mark and Trade Dress.

169. If permitted to continue, Medline's actions will nullify McAirLaid's rights to the exclusive use of the McAirLaid's SuperCore® mark and Trade Dress, free from infringement, and will have a substantial and adverse effect on McAirLaid's existing and projected future

business of marketing and selling its absorbent pads bearing McAirlaids' SuperCore® mark and Trade Dress in violation of the common law of the Commonwealth of Virginia.

170. Medline's unauthorized use of McAirlaids' SuperCore® mark and Trade Dress has resulted in Medline unfairly benefiting from advertising and promotion of McAirlaids' SuperCore® mark and Trade Dress and from the resultant goodwill in McAirlaids' SuperCore® mark and Trade Dress.

171. By reason of and as a direct and proximate result of Medline's trademark and trade dress infringement, Medline has caused damage to McAirlaids' business, reputation and goodwill and has diverted business and sales from McAirlaids to Medline.

172. McAirlaids is entitled to recover its damages from Medline in an amount to be proven at trial.

173. Unless enjoined, Medline's conduct will cause McAirlaids irreparable harm for which there exists no adequate remedy at law.

COUNT III

(Contributory and Vicarious Infringement Under the Lanham Act & Common Law)

174. McAirlaids repeats and specifically incorporates the allegations asserted in each of the preceding paragraphs, as if fully set forth herein.

175. Medline's dealers, distributors, and resellers rely primarily, if not solely, on Medline to supply the advertising and marketing material used in connection with the sale, offering for sale, distribution, or advertising of Medline's products, including McAirlaids-made, Genuine Ultrasorbs and Medline's China-made Ultrasorbs.

176. Medline does not have any advertising or marketing material differentiating Medline's China-made Ultrasorbs from McAirlaids-made, Genuine Ultrasorbs, and no advertising or marketing materials disclaiming the use of McAirlaids' Patented SuperCore® Technology in Medline's China-made Ultrasorbs.

177. Without authorization, Medline's dealers, distributors, and resellers have used McAirLaid's SuperCore® mark and McAirLaid's Trade Dress in connection with the sale, offering for sale, distribution, or advertising of Medline's China-made Ultrasorbs in a manner that misleads, confuses and/or deceives consumers into believing they are purchasing McAirLaid's-made, Genuine Ultrasorbs that (1) are made by McAirLaid's; (2) are made in the U.S.A., (3) contain McAirLaid's Patented SuperCore® Technology, (4) have proven clinical and cost-saving benefits, and (5) contain McAirLaid's Trade Dress. Instead, purchasers receive Medline's China-made Ultrasorbs that (1) are not made by McAirLaid's; (2) are not made in the U.S.A., (3) do not contain McAirLaid's Patented SuperCore® Technology, (4) are not proven to have the clinical and cost-saving benefits of McAirLaid's-made, Genuine Ultrasorbs, and (5) may or may not contain McAirLaid's Trade Dress.

178. Medline's dealers, distributors, and resellers have unlawfully used McAirLaid's-made, Genuine Ultrasorbs advertising and McAirLaid's SuperCore® mark and Trade Dress to pass off, falsely promote and create a market for Medline's China-made Ultrasorbs and reduce sales of McAirLaid's-made, Genuine Ultrasorbs.

179. Medline's dealers', distributors', and resellers' unauthorized use, adoption, appropriation and/or copying of McAirLaid's SuperCore® mark and Trade Dress deprives McAirLaid's of its exclusive rights to control, and benefit from, McAirLaid's SuperCore® mark and Trade Dress.

180. Medline's dealers, distributors, and resellers have infringed McAirLaid's SuperCore® mark and Trade Dress in violation of 15 U.S.C. § 1114 and in violation of the common law of the Commonwealth of Virginia.

181. Medline intentionally induced and encouraged all or substantially all of its dealers, distributors, and resellers to infringe McAirLaid's SuperCore® mark and Trade Dress

when advertising and selling Medline's China-made Ultrasorbs and/or Medline continues to supply its infringing advertising, along with Medline's China-made Ultrasorbs, to its dealers, distributors and resellers whom Medline knows or has reason to know are and will continue to infringe McAirlaids SuperCore® mark and Trade Dress in connection with the sale, offering for sale, distribution, or advertising of Medline's China-made Ultrasorbs.

182. Indeed, Medline's Marketing Kit expressly encourages and induces dealers, distributors, and/or resellers to use Medline's marketing and advertising materials, stating: "Please encourage your staff to familiarize themselves with these [Product Reference] sheets and use them to help explain products to customers over the phone and in your store." Ex. F at 2.

183. Medline and its dealers, distributors, and resellers have an apparent or actual partnership, have authority to bind one another in transactions with third parties or exercise joint ownership or control over Medline's China-made Ultrasorbs and the infringing advertising of McAirlaids SuperCore® mark and Trade Dress used in connection with the sale, offering for sale, distribution, or advertising of Medline's China-made Ultrasorbs.

184. The Marketing Kit also supports Medline's and its dealers', distributors', and/or resellers' apparent or actual partnership and joint control over the products. *See, e.g.*, Ex. F, Module 2 at 9 ("[E]xplain when the customer can expect to receive their order. (With Medline's dropship program, customers often receive their delivery within 24 to 48 hours").

185. If permitted to continue, Medline's dealers', distributors', and resellers' actions will nullify McAirlaids' rights to the exclusive use of McAirlaids' SuperCore® mark and Trade Dress, free from infringement, and will have a substantial and adverse effect on McAirlaids' existing and projected future interstate business of marketing and selling its absorbent pads bearing McAirlaids' SuperCore® mark and Trade Dress in violation of 15 U.S.C. § 1114 and the common law of the Commonwealth of Virginia.

186. Medline's dealers', distributors', and resellers' unauthorized use of McAirLaid's SuperCore® mark and Trade Dress have resulted in Medline's dealers', distributors', and resellers' unfairly benefiting from advertising and promotion of McAirLaid's SuperCore® mark and Trade Dress and from the resultant goodwill in McAirLaid's SuperCore® mark and Trade Dress.

187. By reason of and as a direct and proximate result of Medline's dealers', distributors', and resellers' trademark and trade dress infringement, Medline's dealers', distributors', and resellers' have caused damage to McAirLaid's business, reputation and goodwill and have diverted business and sales from McAirLaid to Medline's dealers, distributors, and resellers.

188. Medline is contributorily and/or vicariously liable for the complained of unlawful infringement by its dealers, distributors, and resellers.

189. Under the Lanham Act, McAirLaid is entitled to an accounting and to recovery from Medline all damages, without limitation, that McAirLaid has suffered due to Medline's dealers', distributors', and resellers' infringing conduct, including Medline's dealers', distributors', and resellers' profits and damages suffered by McAirLaid in an amount to be proven at trial, the costs of the action, treble damages under 15 U.S.C. § 1117(a), treble damages and reasonable attorneys' fees for Medline's dealers', distributors', and resellers' use of the counterfeit SuperCore® mark and counterfeit Trade Dress under 15 U.S.C. § 1117(b), and/or statutory damages for use of the counterfeit mark in lieu of damages and profits under 15 U.S.C. § 1117(c).

190. Under the Lanham Act, Medline's and/or its dealers', distributors', and resellers' actions are willful and deliberate and amount to exceptional circumstances, justifying an award of attorneys' fees to McAirLaid pursuant to 15 U.S.C. § 1117(a).

191. Unless enjoined pursuant to 15 U.S.C. § 1116 and Virginia common law, Medline's dealers', distributors', and resellers' conduct will continue to cause McAirloads irreparable harm for which there exists no adequate remedy at law.

192. Under Virginia common law, McAirloads is entitled to recover its damages from Medline in an amount to be proven at trial.

COUNT IV

(False Designation of Source & Origin Under Section 43(a) of the Lanham Act)

193. McAirloads repeats and specifically incorporates the allegations asserted in each of the preceding paragraphs, as if fully set forth herein.

194. Medline's conduct, as alleged herein, constitutes false designation of source and origin in violation of § 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A).

195. Through the complained of use of McAirloads' SuperCore® mark and Trade Dress, Medline has falsely represented that Medline's China-made Ultrasorbs originate from McAirloads, in whole or part, and/or Medline's China-made Ultrasorbs are approved by McAirloads or affiliated with, connected to or associated with McAirloads and/or its SuperCore® mark, McAirloads' Patented SuperCore® Technology and/or McAirloads' Trade Dress.

196. In **Exhibit I** and elsewhere in its advertising, Medline falsely represents that the U.S.A. is the geographic source and origin of Medline's China-made Ultrasorbs.

197. Moreover, in **Exhibit I** and elsewhere in its advertising, Medline falsely represents that it (rather than McAirloads) is the source and origin of SuperCore®. At the bottom of the "Incontinence Care" page, Medline states that "Aloetouch, FitRight, Protection Plus, Restore, *SuperCore*, and Ultrasorbs are registered trademarks and Capri Plus is a trademark of Medline Industries." (emphasis added). Significantly, Aloetouch®, FitRight®, Protection Plus®, Restore®, Ultrasorbs® and Capri Plus®, are all registered trademarks of Medline. By including SuperCore® among the list of Medline registered trademarks, with no attribution to

McAirlaids, Medline is misrepresenting the source and origin of SuperCore® and McAirlaids Patented SuperCore® Technology.

198. Similarly, **Exhibit J** contains no attribution to McAirlaids, either in connection with SuperCore® or McAirlaids' '702 Patent cited therein, and further supports Medline's false designation of source and origin for SuperCore®.

199. Medline's conduct is likely to cause confusion, or to cause mistake, or to deceive consumers as to the source and origin of SuperCore®, McAirlaids Trade Dress and the geographic origin of Medline's China-made Ultrasorbs which Medline is passing off as McAirlaids-made, Genuine Ultrasorbs.

200. By reason of and as a direct and proximate result of Medline's false designations of source and origin, Medline has caused damage to McAirlaids' business, reputation and goodwill and/or has diverted business and sales from McAirlaids to Medline. McAirlaids is entitled to recover Medline's profits, damages suffered by McAirlaids and the costs of the action.

201. Medline's acts of false designation of source and origin have been committed knowingly, willfully, deliberately and maliciously with the intent to cause confusion and mistake and to deceive. Accordingly, McAirlaids is entitled to a judgment of three times its damages and Medline's ill-gotten profits, together with reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117.

202. By reason of and as a direct and proximate result of Medline's unlawful acts and practices, including those set forth herein, Medline has caused, is causing, and unless such acts and practices are enjoined by the Court, will continue to cause, immediate and irreparable harm to McAirlaids, for which there is no adequate remedy at law, and for which McAirlaids is entitled to injunctive relief.

COUNT V
(False Advertising Under Section 43(a) of the Lanham Act)

203. McAirlaids repeats and specifically incorporates the allegations asserted in each of the preceding paragraphs, as if fully set forth herein.

204. As set forth herein, Medline has violated and continues to violate Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

205. The conduct of Medline and its dealers, distributors, and resellers, as described herein, constitutes false advertising. The statements and representations made by Medline and its dealers, distributors and resellers are likely to mislead, or have misled, consumers about the nature, characteristics, quality and geographic origin of Medline's China-made Ultrasorbs, and are likely to cause, or have caused, consumers to falsely believe, among other things, that Medline's China-made Ultrasorbs (1) are made by McAirlaids, (2) are made in the U.S.A., (3) contain McAirlaids' Patented SuperCore® Technology, (4) have proven clinical and cost-saving benefits, and (5) contain McAirlaids' Trade Dress, all in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125.

206. Medline and its dealers, distributors and/or resellers have engaged in a false advertising campaign to pass off Medline's China-made Ultrasorbs as McAirlaids-made, Genuine Ultrasorbs.

207. By reason of and as a direct and proximate result of Medline' and its dealers, distributors and/or resellers false advertising, Medline and its dealers, distributors and/or resellers have caused damage to McAirlaids' business, reputation and goodwill and/or have diverted business and sales from McAirlaids to Medline and its dealers, distributors and/or resellers. McAirlaids is entitled to recover Medline's profits, damages suffered by McAirlaids and the costs of the action.

208. Medline's and its dealers', distributors', and resellers' wrongful conduct are causing damage and immediate irreparable harm to McAirlaids' reputation through: (1) McAirlaids' false association with the production of cheaper, inferior products made in China; (2) McAirlaids' association with the false advertisements to purchasers; (3) McAirlaids' diminishing goodwill in its SuperCore® mark through its association with Medline's China-made Ultrasorbs; and (4) McAirlaids' diminishing goodwill in its '702 Patent from the patent's association with Medline's China-made Ultrasorbs.

209. Medline's and its dealers', distributors', and resellers' wrongful conduct are causing damage and immediate irreparable harm to McAirlaids' economic interest by: (1) reducing sales and demand for McAirlaids-made, Genuine Ultrasorbs; (2) reducing the goodwill and economic value of McAirlaids' SuperCore® mark, McAirlaids' '702 Patent and Trade Dress; (3) intermingling McAirlaids-made, Genuine Ultrasorbs with Medline's China-made Ultrasorbs in the marketplace and creating a false sense of equivalency.

210. Medline's and its dealers', distributors', and resellers' acts of false advertising have been committed knowingly, willfully, deliberately and maliciously with the intent to cause confusion and mistake and to deceive.

211. Accordingly, McAirlaids is entitled to a judgment of three times its damages and Medline's ill-gotten profits, together with reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117.

212. By reason of and as a direct and proximate result of Medline's unlawful acts and practices, including those set forth herein, Medline has caused, is causing, and unless such acts and practices are enjoined by the Court, will continue to cause, immediate and irreparable harm to McAirlaids, for which there is no adequate remedy at law, and for which McAirlaids is entitled to injunctive relief.

COUNT VI
**(Contributory and Vicarious False Advertising and False Designation of
Source and Origin Under § 43(a) of the Lanham Act)**

213. McAirlands repeats and specifically incorporates the allegations asserted in each of the preceding paragraphs, as if fully set forth herein.

214. As set forth herein, Medline is contributorily and vicariously liable for its dealers', distributors' and resellers' violations of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

215. By reason of and as a direct and proximate result of Medline's and its dealers', distributors' and/or resellers' false advertising, Medline and its dealers, distributors and/or resellers have caused damage to McAirlands' business, reputation and goodwill and/or have diverted business and sales from McAirlands to Medline and its dealers, distributors and/or resellers. McAirlands is entitled to recover from Medline, Medline's dealers', distributors' and resellers' profits, damages suffered by McAirlands and the costs of the action.

216. Medline's and its dealers', distributors', and resellers' acts of false advertising and false designation of source and origin have been committed knowingly, willfully, deliberately and maliciously with the intent to cause confusion and mistake and to deceive.

217. Accordingly, McAirlands is entitled to a judgment of three times its damages and Medline's dealers', distributors' and resellers' ill-gotten profits, together with reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117.

218. By reason of and as a direct and proximate result of Medline's dealers', distributors' and resellers' unlawful acts and practices set forth herein, Medline's dealers', distributors' and resellers' have caused, are causing, and unless such acts and practices are enjoined by the Court, will continue to cause, immediate and irreparable harm to McAirlands, for

which there is no adequate remedy at law, and for which McAirlands is entitled to injunctive relief.

COUNT VII
(False Advertising Under Virginia Code §§ 18.2-216, 59.1-68.3)

219. McAirlands repeats and specifically incorporates the allegations asserted in each of the preceding paragraphs, as if fully set forth herein.

220. The actions of Medline described herein including but not limited to the use of false and deceptive and misleading claims about Medline's China-made Ultrasorbs to solicit customers through online marketing materials, direct customer communications, and other means constitutes false and misleading advertising in violation of Virginia Code §§ 18.2-216 and 59.1-68.3, and McAirlands has suffered and is continuing to suffer losses to its business reputation and goodwill as a result thereof.

221. Medline's actions, as alleged herein, were intended to wrongfully divert sales and business from McAirlands to Medline.

222. Medline's advertisements, as alleged herein, contained false assertions, representations, and statements of fact which are untrue, deceptive or misleading.

223. Medline has made and distributed these customer solicitations through websites and other means in Virginia.

224. McAirlands has no adequate remedy at law and is suffering irreparable harm which will continue unless enjoined.

225. Medline's conduct has caused damage to McAirlands' business, reputation and goodwill, and McAirlands seeks recovery of the same in an amount to be determined at trial. McAirlands is entitled to recover attorneys' fees under Virginia Code § 59.1-68.3.

WHEREFORE, McAirloads respectfully requests that the Court:

1. Award Judgment in favor of McAirloads and against Medline on all counts of the Complaint;
2. Award McAirloads its actual and compensatory damages, without limitation, sustained due to Medline's unlawful and infringing conduct in violation of McAirloads legal and equitable rights;
3. Order Medline to provide an accounting, impose a constructive trust, and award McAirloads restitution, disgorgement of all profits derived from Medline's and its dealers', distributors' and resellers' unlawful and infringing conduct and/or other equitable remedies in an amount to be proven at trial;
4. Award McAirloads full and complete relief, including, without limitation, its costs and reasonable attorney's fees, for Medline's violations of federal and common law trademark and trade dress infringement, unfair competition, false designation of source and origin, and false advertising;
5. Award McAirloads treble damages;
6. Award McAirloads any available punitive damages;
7. Permanently enjoin Medline a from all unlawful and infringing acts that violate McAirloads' legal and equitable rights;
8. Temporarily, preliminarily and/or permanently restrain and enjoin Medline, its officers, directors, employees, agents, and representatives, and any and all persons in active concert or participation with any of them, including Medline's dealers, distributors and resellers, from:

(a) Continuing to falsely market or advertise Medline's China-made Ultrasorbs as:

- (i) made by McAirLaid's;
- (ii) made in the U.S.A.;
- (iii) containing McAirLaid's Patented SuperCore® Technology;
- (iv) having proven clinical and cost-saving benefits; and
- (v) containing McAirLaid's Trade Dress.

(b) Continuing to pass off Medline's China-made Ultrasorbs as McAirLaid's-made, Genuine Ultrasorbs with McAirLaid's Patented SuperCore® Technology and/or manufactured pursuant to McAirLaid's '702 Patented process;

(c) Continuing to infringe McAirLaid's SuperCore® trademark in connection with the marketing, advertising, selling and offering for sale of Medline's China-made Ultrasorbs; and

(d) Continuing to source, sell or offer for sale Medline's China-made Ultrasorbs until such time as Medline has successfully demonstrated to the Court that Medline has:

- (i) fully complied with Paragraphs 8(a)-(c) above; and
- (ii) fully performed all of the following corrective actions to eliminate and prevent purchaser and marketplace confusion and false impressions of equivalency between Medline's China-made Ultrasorbs and McAirLaid's-made, Genuine Ultrasorbs:

(1) Issuing, emailing and mailing a formal written public retraction to all of its Ultrasorbs dealers, distributors, resellers, and purchasers attaching a copy of the Preliminary Injunction Order and advising them that: (i) Medline has sourced, sold, and offered for sale Medline's China-made Ultrasorbs; (ii) Medline's China-made Ultrasorbs are not

McAirlaids-made, Genuine Ultrasorbs; (iii) Medline's China-made Ultrasorbs are not manufactured, in whole or part, by McAirlaids; (iv) unlike McAirlaids-made, Genuine Ultrasorbs, Medline's China-made Ultrasorbs are not made in the U.S.A.; (v) Medline's China-made Ultrasorbs do not contain McAirlaids' Patented SuperCore® Technology; (vi) Medline's China-made Ultrasorbs were not the subject of or tested in the hospital study by Shannon, R. and LaJoie, J. entitled *Economic Impact of Ultrasorbs AP Absorbent Pads in Prevention of Hospital-Acquired Pressure Ulcers*. Global Health Economic Projects, LLC and New York Methodist Hospital, Brooklyn NY. March 2009 ("Hospital Study") and have not been clinically shown to help maintain skin integrity as part of an overall pressure ulcer prevention program or provide the cost-savings benefits identified in the Hospital Study; (vii) Medline's China-made Ultrasorbs do not contain McAirlaids' Trade Dress; and (viii) McAirlaids-made, Genuine Ultrasorbs with McAirlaids' Patented SuperCore® Technology were the subject of and tested in the Hospital Study and were clinically shown to help maintain skin integrity as part of an overall pressure ulcer prevention program as stated in the Hospital Study and were shown to provide the cost-savings benefits identified in the Hospital Study (collectively, the "Formal Public Retraction").

(2) Issuing a press release containing its Formal Public Retraction, and prominently and continuously displaying its Formal Public Retraction on its website www.medline.com and in its marketing materials, on the websites and in the marketing materials of its Ultrasorbs dealers, distributors and resellers, and in all other materials in connection with the advertising, selling or offering for sale of any Ultrasorbs.

9. Grant such other and further relief as the Court deems just and equitable; and
10. Order a trial by jury on all appropriate issues.
- 11.

Dated: April 29, 2015

Respectfully submitted,

**MCAIRLAID'S VLIESTOFFE GMBH, and
MCAIRLAIDS, INC.**

By /s/ Joshua F. P. Long
Of Counsel

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CERTIFICATE OF SERVICE

I certify that on this 29th day of April, 2015, a copy of the foregoing was filed with Court and served via e-mail on all counsel of record in the related case McAirloads v. Medline, 7:15-cv-6-MFU (W.D. Va. 2014).

By: /s/ Joshua F. P. Long